IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 16759 of 2000

Between:

A.Suresh,

S/o.Narasimhulu,

30 years, Owner of the

Auto Trolley, H.No.13-3-1049/354.

Jiyaguda, Hyderabad.

..... PETITIONER

AND

1. The Commissioner of Prohibition

   And Excise, Andhra Pradesh,

   Nampally, Hyderabad.

2. The Deputy Commissioner of Prohi-

   Bition & Excise, Mahaboobnagar

   District, Mahaboobnagar.

3. The Station House Officer,

   Shadnagar, Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ, order or direction one in the nature of Writ of Certiorari by

calling the records related to the orders passed by the 1st respondent herein vide his Proceedings in C.R.NO.3287/D/P.E/99/B2, dated 23-02-2000 and quash the same and consequently declare the orders passed by the 2nd respondent herein in his Proceedings in CR.No.B1/471/99, dated 08-06-1999 as illegal, void and abinitio being the contrary to the Article 14 of the Constitutionfo India.

Counsel for the Petitioner: MR.A.RAVINDER

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court, at the admission stage, made the following :

HONOURABEL SRI JUSTICE V.ESWARAIAH

WRIT PETITION No. 16759 of 2000

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ORDER:

Challenging the proceedings dated 23-02-2000 issued by the 1st respondent-Commissioner of Prohibition and Excise, Nampally, Hyderabad, confirming the order dated 08-06-1999, issued by the 2nd respondent-Deputy Commissioner of Prohibition and Excise, Mahaboobnagar, in confiscating the petitioner's vehicle Auto Trolley, bearing Regn.No.AP 13U-9724, the present writ petition has been filed.

2 . According to the petitioner, he is the owner of Auto Trolley, bearing Regn.No.AP 13U-9724. The said vehicle was seized on 14-02-1999, on the ground that it was found transporting Black Jaggery and Navasagar material meant for the manufacture of I.D.Liquor, by the 3rd respondent-Station House Officer, Shadnagar, Mahaboobnagar District, vide P.C.R.No.131/98-99, dated 14-02-1999, for the offence punishable under Sections 7-A of AP Prohibition Act, 1995 and 34 (a) & 34 (e) AP Excise Act, 1968. The accused persons are viz., 1) Segu Ashok, son of Shankrappa, 2) Nattala Ramesh, son of Bheemaiah, 3) Limbya, son of Bichya.

3. Admittedly, the petitioner namely A.Suresh, son of Narsimulu, is not at all the accused in the said offence, registered in PCR.No.131/98-99, dated 14-02-1999. After seizing the said vehicle, the same was produced before the 2nd

respondent, for granting interim custody. The 2nd respondent, vide his proceedings dated 17-03-1999, granted interim custody of the vehicle in favour of the petitioner, on obtaining the bank guarantee for Rs.30,000/-. Later, a notice was issued for the purpose of confiscation and accordingly the 2nd respondent passed confiscation order dated 08-06-1999. Consequently, the said vehicle was confiscated by exercising the powers under Section45 and 46-A of AP Excise Act, 1968 and Sections 12 and 13 of AP Prohibition Act, 1995.

4 . Aggrieved by the said order, the petitioner filed an appeal in CR.No.3287/DPE/99/B2, before the 1st respondent. The 1st respondent, vide his proceedings dated 23-02-2000, dismissed the said appeal, holding that the petitioner who is a owner of the crime vehicle did not exercise due diligence to ensure that the driver does not indulge in illegal transportation of the contraband seized, and the seizure of Black Jaggery and Navasagaram along with 8 litres of I.D. liquor is only meant for that the Auto Trolley was used for transporting the material for producing I.D.Liquor.

5. But, there is no allegation made against the petitioner in the confiscating proceedings by the respondents 1 and 2 to the effect that the petitioner had the knowledge about the transportation of I.D.Liquor in his vehicle. Hence, in the absence of any allegation against the petitioner that he had the knowledge about the transportation of the I.D. Liquor
of 8 liters, the vehicle of the petitioner cannot be confiscated.

6. This Court has also taken a view that unless the owner is having knowledge about the involvement of his vehicle in the excise offence, the vehicle of the owner cannot be confiscated. Accordingly, the impugned orders dated
08-06-1999 as confirmed by the order dated 23-02-2000, are set aside and the respondents are directed to release the vehicle in favour of the petitioner, if it is not already released, and discharge the bank guarantee furnished by him.

7. In the result, the writ petition is allowed. No costs.

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April 4, 2005

Kvr

To

1. The Commissioner of Prohibition
   And Excise, Andhra Pradesh,
   Nampally, Hyderabad.
2. The Deputy Commissioner of Prohi-
   Bition & Excise, Mahaboobnagar
   District, Mahaboobnagar.
3. The Station House Officer,
   Shadnagar, Mahaboobnagar District.

4. Two C.Cs to the GP for Prohibition and Excise,

AP High Court Buildings, High Court of AP.,

Hyderabad.(o.u.t.)

5. Two C.D.Copies.

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Monday, the fourth day of April, Two thousand and five.